

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

BRUCE HEYWARD,	::	MOTION TO VACATE
Movant,	::	28 U.S.C. § 2255
	::	
v.	::	CRIMINAL NO.
	::	1:08-CR-0189-TWT-RGV-3
UNITED STATES OF AMERICA,	::	
Respondent.	::	CIVIL ACTION NO.
	::	1:11-CV-1900-TWT-RGV

ORDER FOR SERVICE OF REPORT AND RECOMMENDATION

Attached is the report and recommendation of the United States Magistrate Judge made in accordance with 28 U.S.C. § 636(b)(1) and this Court's Local Rule 72. Let the same be filed and a copy, with a copy of this order, be served upon counsel for the parties.

Each party may file written objections, if any, to the report and recommendation within fourteen (14) days after being served with a copy of it. 28 U.S.C. § 636(b)(1). Should objections be filed, they shall specify with particularity the alleged error(s) made (including reference by page number to the transcript if applicable) and shall be served upon the opposing party. The party filing objections will be responsible for obtaining and filing the transcript of any evidentiary hearing for review by the district court. If no objections are filed, the report and recommendation may be adopted as the

opinion and order of the district court and any appeal of factual findings will be limited to a review for plain error or manifest injustice. United States v. Slay, 714 F.2d 1093 (11th Cir. 1983).

The Clerk is **DIRECTED** to submit the report and recommendation with objections, if any, to the district court after expiration of the above time period.

IT IS SO ORDERED this 7th day of September, 2011.


RUSSELL G. VINEYARD
UNITED STATES MAGISTRATE JUDGE

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FINAL REPORT AND RECOMMENDATION

This matter has been submitted to the undersigned Magistrate Judge for consideration of movant Bruce Heyward's pro se motion to vacate, set aside, or correct this sentence pursuant to 28 U.S.C. § 2255, [Doc. 428], the government's response thereto, [Doc. 436], and Heyward's letter, [Doc. 439], which is construed as a motion to withdraw his § 2255 motion.

In Heyward's motion to vacate his sentence, he asserts that his counsel was ineffective for (1) inadequately informing him about the plea agreement, (2) refusing to argue for a safety valve reduction, (3) failing to argue the 18 U.S.C. § 3553(a) factors, (4) failing to argue the sentencing disparity between all defendants, (5) failing to argue that the government breached the plea agreement, (6) failing to argue prosecutorial misconduct and a due process violation based on the sentencing disparity

between defendants, and (7) failing to argue that his sentence should be reduced because he has been a model prisoner while incarcerated. [Doc. 428 at 2-13]. The government responds that Heyward's claims are barred by his valid guilty plea and the appeal waiver provision of his plea agreement. [Doc. 436 at 11-26]. In his letter, Heyward "apologize[s] to the courts and to U.S. Attorney Michael Smith for any inconvenience [he has] caused" and states that he would like to "withdraw [his] 2255 motion immediately." [Doc. 439].

Accordingly, **IT IS RECOMMENDED** that Heyward's motion to withdraw, [Doc. 439], be **GRANTED**, and that this action be **DISMISSED**.

The Clerk is **DIRECTED** to terminate the referral to the assigned Magistrate Judge.

SO RECOMMENDED, this 7th day of September, 2011.


RUSSELL G. VINEYARD
UNITED STATES MAGISTRATE JUDGE